



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1992

Mr. Wayne Bingham
Superintendent of Schools
Rockwall Independent School District
801 East Washington
Rockwall, Texas 75087

OR92-180

Dear Mr. Bingham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15346.

You inform us that on February 25, 1992, you received a request for information relating to Rockwall Independent School District's Special Education Program. You requested a decision from this office on March 12, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the Open Records Act.

Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App. - Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Open Records Decision No. 319; *see City of Houston* at 324. A compelling interest is shown if the information is deemed confidential by some other source of law, or if the release of the information involves third party interests. Open Records Decision No. 150 (1977).

Although you assert section 3(a)(3) of the Act excepts the requested information from required public disclosure, you have not shown compelling reasons why the information at issue should not be released. The information is presumed public information and must be released with the following exception.

We note that you included among the documents you sent for our inspection several computer printouts entitled "Special Education Active File," which contain lists of special education students at certain schools and other information about those students. The Family Educational Rights and Privacy Act of 1974, ("FERPA"), Title 20 U.S.C.A. section 1232g, as amended, generally prohibits the release of education records without a parent's written consent. *See* Open Records Decision No 539 (1990); *see also* section 14(e), article 6252-17a, V.T.C.S. (incorporating FERPA into the Open Records Act.) Education records, for purposes of FERPA, are records that contain information directly related to a student and that are maintained by an educational institution or agency. *See* Open Records Decision No. 193 (1978). The fact that a student's name appears on one of these computer printouts of lists of special education students reveals information directly related to that student. The release of this printout, we assume, is in response to the request for the number of special education students. If you release this printout, you must delete all information which identifies the students, including the students names and identification numbers. *See* Open Records Decision No. 332 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-180.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Re: ID# 15346

cc: Margaret M. Hubbard
1927 Lake Shore
Rockwall, Texas 75087